

Staker & Parson and its insurance carrier, Liberty Mutual (referred to jointly as “Staker” hereafter), ask the Utah Labor Commission to review Administrative Law Judge Marlowe's award of benefits to A.T.H. under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Mr. H. filed an application with the Commission on November 24, 2004, to obtain workers' compensation benefits for injuries Mr. H. suffered on August 27, 2004, while working for Staker. Judge Marlowe held an evidentiary hearing on May 19, 2005, and then issued her decision on December 30, 2005, awarding benefits to Mr. H..

In challenging Judge Marlowe's decision, Staker raises only one issue—whether Mr. H.'s work for Staker is the legal cause of Mr. H.'s injuries.

FINDINGS OF FACT

The Commission adopts Judge Marlowe's findings of fact, which are not disputed by either party. The facts material to the issue raised by Staker's motion for review are as follows.

Mr. H. worked for Staker as a cement truck driver and pourer. On August 27, 2004, he delivered cement for a backyard patio. Because of space restrictions and other considerations, Mr. H. had great difficulty getting the cement truck in place. Once it was in place, he had to set up four cement chutes to complete the pour.

The chutes Mr. H. used were half cylinders four feet high and approximately 2 feet wide, made of metal and each weighing 53 pounds. The chutes could be connected to form a pathway through which the wet cement flows. In this instance, Mr. H. lifted the first two chutes off a side rack and put them in place with no difficulty. However because of the tight spacing, the other two chutes were difficult to maneuver and Mr. H. had to hold them upright against his body while squeezing through a small space and side-stepping. The third chute had to be pulled and put on an angle. After Mr. H. carried it to a certain point, he laid it on the ground and dragged it into location. The fourth chute had to be twisted out of its carrier and maneuvered, and then dragged on the ground.

After setting up the chute apparatus, Mr. H. poured the cement and removed sections of the chute as the pour progressed. He washed out the chutes and replaced them on the truck, essentially reversing the steps he had taken to lay out the chutes. Mr. H. felt achy and strained when he got in his truck to back it out. He laid down on a strip of grass for awhile. That night at home, he was uncomfortable. The next day his back “seized up.”

The medical evidence establishes that Mr. H. suffered from a degenerative back condition prior to his exertions at work on August 27, 2004, and that this preexisting condition contributed to the injuries for which he now seeks workers' compensation benefits. The medical evidence also establishes that Mr. H.'s work-related exertions on August 27, 2004, aggravated his preexisting condition.

DISCUSSION AND CONCLUSION OF LAW

The Utah Workers' Compensation Act provides benefits to workers injured by accident "arising out of and in the course of" employment. Utah Code Ann. §34A-2-401. To qualify for benefits under the foregoing standard, an injured worker must establish that his or her work was both the "legal cause" and the "medical cause" of the injury in question. *Allen v. Industrial Commission*, 729 P.2d 15, 25 (Utah 1986). In this case, Staker concedes that the requirement of "medical causation" has been satisfied. The Commission therefore turns to the question of whether Mr. H.'s work on August 27, 2004, also satisfies the requirement of "legal causation."

In *Allen*, *Ibid.*, the Utah Supreme Court discussed the context in which the requirement of "legal causation" is applied.

Whether an injury arose out of or in the course of employment is difficult to determine where the employee brings to the workplace a personal element of risk such as a preexisting condition. Just because a person suffers a preexisting condition, he or she is not disqualified from obtaining compensation. Our cases make clear that "the aggravation or lighting up of a pre-existing disease by an industrial accident is compensable" (Citation omitted.) To meet the legal causation requirement, a claimant with a preexisting condition must show that the employment contributed something substantial to increase the risk he already faced in everyday life because of his condition. This additional element of risk in the workplace is usually supplied by an exertion greater than that undertaken in normal, everyday life.

In its subsequent decision in *Price River Coal Co. v. Industrial Commission*, 731 P.2d 1079, 1082 (Utah 1986), the Utah Supreme Court described the test for legal causation as follows:

Under *Allen*, an usual or ordinary exertion, so long as it is an activity connected with the employee's duties, will suffice to show legal cause. However, **if the claimant suffers from a pre-existing condition, then he or she must show that the employment activity involved some unusual or extraordinary exertion over and above the "usual wear and tear and exertions of nonemployment life."** The requirement of "unusual or extraordinary exertion" is designed to screen out those injuries that result from a personal condition which the worker brings to the job, rather than from exertions required of the employee in the workplace. (Citations omitted; emphasis added.)

Thus, because Mr. H. suffered from a preexisting back condition that contributed to his current injury, he must satisfy the more stringent prong of the *Allen* test for legal causation by showing that his work at Staker involved “some unusual or extraordinary exertion over and above the usual wear and tear and exertions of nonemployment life.” To assess whether Mr. H.’s particular work activities met the *Allen* test of an “unusual or extraordinary exertion,” the Commission must compare his work activities to other typical activities and exertions experienced by men and women in modern nonemployment life. See *Allen* at 26. Some of the specific examples cited by the Supreme Court in *Allen* as examples of typical nonemployment exertion are “taking full garbage cans to the street, lifting and carrying baggage for travel, changing a flat tire on an automobile, lifting a small child to chest height, and climbing the stairs in buildings.”

Since the Supreme Court’s decision in *Allen*, the Commission and the Commission’s Appeals Board have had occasion to consider legal causation in the context of many types and combinations of exertion. In most cases, the exertion in question can fairly easily be characterized as “unusual or extraordinary” (and therefore compensable) or “usual and ordinary” (and therefore noncompensable). The Commission views Mr. H.’s exertion in this case as falling quite close to the dividing line between these two categories. However, based on the substantial weight of the chutes that Mr. H. lifted, the repetitions of such lifting, and the awkward nature of the lifting, the Commission concludes that Mr. H.’s exertions were beyond what is typically experienced in modern nonemployment life. The Commission therefore concurs with Judge Marlowe’s determination that Mr. H.’s exertions at work on August 27, 2004, satisfy the more stringent prong of the *Allen* test for legal causation and that the injuries caused by his work are compensable under the Workers’ Compensation Act.

ORDER

The Commission affirms Judge Marlowe’s decision and denies Staker’s motion for review. It is so ordered.

Dated this 28th day of February, 2006.

R. Lee Ellertson
Utah Labor Commissioner